

REMARKS

This Amendment cancels claims 8-12 and makes editorial changes to claims 1-7 and 13-19. Claims 1-7 and 13-19 are pending, although it is believed claims 13-19 have been withdrawn from further consideration.

The 35 U.S.C. § 102(b) rejection of claims 1-10 and 12 over U.S. Patent No. 6,342,397 to Soini et al. is traversed. Claims 8-12 have been canceled. A feature of the diagnostic method of claims 1-7 is the quantification of a clinical chemistry analyte by excitation of a two-photon fluorescent compound or compounds and measurement of two-photon excited fluorescence. The specification defines "clinical chemistry analytes" as analytes which are measured by means of "clinical chemistry assays" (page 18, lines 4-5), which are themselves defined as quantitative assays which incorporate a chemical reaction, measured on a regular basis in clinical chemistry practice, excluding bioaffinity assays (page 18, lines 1-3). The specification defines "bioaffinity assays as all assays that are based on bioaffinity binding reactions, i.e., a reaction where bioaffinity complexes are formed. These bioaffinity assays include immunoassays and nucleic acid hybridization assays, but do not include assays which are based on enzyme-catalyzed

chemical reactions or other reactions where covalent binding of compounds is changed (Specification, page 17, lines 2-26).

Soini et al. fails to disclose the clinical chemistry analyte feature of the claimed method. Instead, one of ordinary skill in the art would understand the clinical analytes disclosed in Soini et al. are all analytes quantified using immunoassays, i.e., assays defined as *bioaffinity assays*, and would not consider these analytes clinical chemistry analytes.

Reconsideration and withdrawal of the anticipation rejection of claims 1-10 and 12 over U.S. Patent No. 6,342,397 to Soini et al. are respectfully requested.

The 35 U.S.C. § 103(a) rejection of canceled claim 9 over Soini et al. is traversed to the extent it may be applied against any of claims 1-7. As discussed above, a feature of the claimed diagnostic method is the quantification of a clinical chemistry analyte by excitation of a two-photon fluorescent compound or compounds and measurement of two-photon excited fluorescence. The clinical chemistry analytes are quantified by a method in which the analyte undergoes a chemical reaction or the analyte catalyses a chemical reaction. The inventors have discovered two-photon fluorescence technology surprisingly provides, when applied to

quantification of clinical chemistry analytes, numerous advantages discussed in detail in the application (see page 22, line 15 to page 25, line 20).

Soini et al. fails to raise a prima facie case of obviousness against the claimed method because one of ordinary skill in the art is given no suggestion that clinical chemistry analytes could be quantified by a method in which the analyte undergoes a chemical reaction or the analyte catalyses a chemical reaction using two-photon fluorescence technology. Instead, Soini et al. discloses quantification of clinical analytes using a bioaffinity assay which does not involve a chemical reaction of the analyte or a catalysis of a chemical reaction by the analyte.

Reconsideration and withdrawal of the obviousness rejection of claim 9 are earnestly requested.

It is believed this application is in condition for allowance. Reconsideration and withdrawal of all rejections of claims 1-7, and issuance of a Notice of Allowance directed to those claims, are earnestly requested. The Examiner is urged to telephone the undersigned should she believe any further action is required for allowance.

U.S. Patent Appln. S.N. 10/588,861
AMENDMENT

PATENT

It is not believed any fee is required for entry and consideration of this Amendment. Nevertheless, the Commissioner is authorized to charge Deposit Account No. 50-1258 in the amount of any such required fee.

Respectfully submitted,

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